

REPORT TO: East Lothian Council

MEETING DATE: 28 October 2014

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: SESplan Supplementary Guidance on Housing Land

1 PURPOSE

- 1.1 To ratify the decision of the SESplan Joint Committee of 30 June 2014 to approve the modification to the SESplan Supplementary Guidance on Housing Land as directed by Scottish Ministers.

2 RECOMMENDATIONS

- 2.1 It is recommended that East Lothian Council:
- (i) notes SESplan's approval of its *Supplementary Guidance: Housing Land* subject to the amendment of how the five year housing land supply is calculated as directed by Scottish Ministers; and
 - (ii) agrees to adopt the Supplementary Guidance on this basis.

3 BACKGROUND

- 3.1 Scottish Ministers approved SESplan's Strategic Development Plan (SDP), with modifications, on 27 June 2013, the modifications including the phasing and distribution of the overall SESplan housing requirement to be subject to Supplementary Guidance to provide detailed further information on housing targets of the six member authorities for each plan period.
- 3.2 Subsequent drafts of the Supplementary Guidance were approved by the SESplan Joint Committee and ratified by the six member authorities. Most recently East Lothian Council ratified the Guidance with its final editorial amendments on 22 April 2014.

- 3.3 Essentially, this draft Guidance required East Lothian to identify land capable of delivering 10,050 new homes over the periods 2009-2019 (6,250 homes) and 2019-2024 (3,800 homes). While existing undeveloped housing land would contribute to this total, there would nevertheless be a need for the Council's Local Development Plan to identify significant additional housing land.
- 3.4 Member authority ratification of the finalised Supplementary Guidance, with minor amendments, was completed by mid-May 2014 and thereafter submitted to Scottish Ministers.
- 3.5 The Scottish Ministers response on 18 June 2014 was to approve the guidance, subject to modification of how the five year housing land supply is calculated. The modification under Section 22 (8) of the Town and Country Planning (Scotland) Act 1997 is that, before the Supplementary Guidance is adopted, it must be modified to remove the second sentence of paragraph 3.13. This sentence reads:
- 'Member Authorities will base their calculation of the five year land supply on the period 2009 – 2024, taking into consideration housing completions.'*
- 3.6 Scottish Ministers consider that the inclusion of this sentence gives rise to a potential inconsistency between the approved SDP and the Supplementary Guidance if the time period over which the housing land supply is calculated over that whole plan period of 2009-24 rather than within the 5 year sub-periods (2014-19 and 2019-24) . The Ministers view is that the SDP itself requires the calculation to be within the sub-periods.
- 3.7 Scottish Ministers also consider that the inclusion of this sentence does not comply with Regulation 27 (2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. This requires that for a matter to be included in Supplementary Guidance that will form part of the development plan it must be *'expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance'*.
- 3.8 Ministers therefore consider that to avoid such inconsistency, to ensure compliance with the legislation and to avoid potential further delays in the process, that the sentence be removed.
- 3.9 Whilst the SESplan Joint Committee considers that this determination by the Ministers and its reasoning goes against the approach which SESplan and the member authorities considered reasonable, pragmatic and consistent with the SDP, it recognises the legal, procedural and timescale issues involved with any challenge to the determination and therefore it should be accepted.
- 3.10 Legal advice to the SESplan Joint Committee also confirms that this decision requires to be ratified by each of the Member Authorities as the Joint Committee has no powers to adopt Supplementary Guidance. The Joint Committee approves the modified Guidance and recommends that the

Council adopts it as modified by Scottish Ministers.

- 3.11 The implication of the modification on calculating the five year housing land supply is to affect the clarity of calculating the five year housing land supply for the local planning authorities and for the development industry. In respect of this the Joint Committee and the member authorities have agreed to investigate the development of a consistent approach to the calculation of the five year land supply to provide this clarity. Such a procedure will not however form part of the development plan.
- 3.12 In respect of East Lothian, the change would mean that the available land supply would require to be capable of providing for some 820 house completions per annum under the Guidance as modified rather than some 790 under the unmodified approach (calculated on the latest agreed housing audit 2012-13).
- 3.13 In line with this decision of the SESplan Joint Committee the five other local authority SESplan members have adopted the modification.

POLICY IMPLICATIONS

- 4.1 The modification to the Supplementary Guidance will have an effect on the context for calculating East Lothian's five year housing land supply and the extent to which this is being met.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 SESplan Strategic Development Plan, June 2013 (as approved)
- 7.2 Report to 22 October 2013 meeting of East Lothian Council by Depute Chief Executive (Partnerships and Services for Communities), *SESplan Supplementary Guidance on Housing Land*

- 7.3 SESplan Supplementary Guidance – Housing Land, Consultation Draft, November 2013
- 7.4 Report to 10 March 2014 SESplan Joint Committee by SDP Manager, *Supplementary Guidance*
- 7.5 Report to 22 April 2014 meeting of East Lothian Council by Depute Chief Executive (Partnerships and Services for Communities), *SESplan Supplementary Guidance on Housing Land*

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